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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 CARLOS P. VILLA,

11 Plaintiff,

No. CIV S-03-1737 \*\*\* EFB PS

12 vs.

13 MICHAEL J. ASTRUE,  
14 Commissioner of Social Security,

ORDER

15 Defendant,  
\_\_\_\_\_ /

16 For the following reasons, the undersigned must disqualify himself from participating in  
17 this matter pursuant to 28 U.S.C. § 455(a), and will direct the Clerk of Court to reassign this case  
18 to another Magistrate Judge, and to assign a District Judge, for all further proceedings.

19 This case has been beset by delays and complications. Originally filed in this court more  
20 than five years ago, on August 12, 2003, plaintiff's *in forma pauperis* application was granted,  
21 and the case remanded, by stipulation of the parties, to the Commissioner on December 15, 2003,  
22 for the purpose of locating the claim file and tape recording of the administrative hearing.  
23 Nearly two years later, on November 22, 2005, the Commissioner informed the court that the  
24 record had been located but nonetheless moved to dismiss plaintiff's complaint on the ground  
25 that it had been filed after the sixty-day period authorized by 42 U.S.C. § 405(g).

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1 Although the Commissioner's motion to dismiss was timely served upon plaintiff, he did  
2 not respond, and the case languished in this court for more than two and a half years, following  
3 the retirement of the former magistrate judge and failure timely to reassign the case. The staff of  
4 the undersigned subsequently "found" this case in July 2008. Thereafter, the case was formally  
5 reassigned to the undersigned, who directed plaintiff to file an opposition to the pending motion,  
6 and then further briefing.

7 However, upon commencing review of the merits of the motion and opposition thereto, it  
8 came to the attention of the undersigned that his tenure as the Chief of the Civil Division for the  
9 U.S. Attorney's Office coincided with the pendency of this action and, therefore, with that  
10 Office's representation of defendant. Accordingly, recusal of the undersigned is appropriate  
11 pursuant to 28 U.S.C. § 455(a) ("Any justice, judge, or magistrate judge of the United States  
12 shall disqualify himself in any proceeding in which his impartiality might reasonably be  
13 questioned").

14 Additionally, because plaintiff has not completed and returned the "Consent to  
15 Assignment or Request for Reassignment" form sent to him on November 3, 2008, it is  
16 necessary to assign a district judge to review the newly assigned magistrate judge's findings and  
17 recommendations and to preside over this case.

18 For the foregoing reasons, the undersigned disqualifies himself from further participation  
19 in this matter. The Clerk of Court shall reassign this case to another Magistrate Judge, and to a  
20 District Judge, for all further proceedings, notify the parties, and make appropriate adjustments  
21 in the assignment of civil cases to compensate for such reassignment.

22 SO ORDERED.

23 DATED: May 4, 2009.

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25 EDMUND F. BRENNAN  
26 UNITED STATES MAGISTRATE JUDGE